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SUPREME COURT, U. S.

# Supreme Court of the United States

October Term, 1973
No. 73-520

EARL W. TAYLOR,

*Petitioner,*

*vs.*

R. H. MACY & COMPANY, INC.,

*Respondent.*

**Brief in Opposition to Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.**

DON T. HIBNER, JR. of
SHEPPARD, MULLIN, RICHTER &
HAMPTON,
*Attorneys for Respondent.*

SHEPPARD, MULLIN, RICHTER & HAMPTON,
DON T. HIBNER, JR.,
TERENCE M. MURPHY,
458 South Spring Street, Suite 600,
Los Angeles, Calif. 90013,

MCENERNEY & JACOBS,
GARRETT MCENERNEY, II,
500 Sansome Street, Suite 501,
San Francisco, Calif. 94111,
*Of Counsel.*

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**Brief in Opposition to Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.**

## I.
## INTRODUCTORY STATEMENT.

Petitioner seeks review of the judgment below which affirmed the dismissal of the complaint after trial by the District Court.

Petitioner claims damages under Title 15 U.S.C. §1640, alleging that respondent ("Macy") failed to disclose the annual percentage rate as required by the Truth in Lending Act. Both the District Court and the Court of Appeals found that Macy's disclosures were fully in compliance with the Truth in Lending Act ("Act") and Regulation Z of the Federal Reserve Board, issued pursuant to the Act, 12 C.F.R. Section 226. The District Court held additionally that not only were Macy's disclosures proper, they are required.

While Petitioner's theory of recovery remains murky, he apparently contends that Macy violated the Act and

Regulation Z by failing to disclose the annual percentage rate within an accuracy of one-quarter of one percent in periodic statements sent to Petitioner under his open-end revolving account. Herein lies the confusion. Petitioner has confused the annual percentage rate with an effective yield rate. Petitioner refuses to recognize the fact that both the Act and Regulation Z describe a *nominal* rate, not a true yield rate, when mandating the disclosures to be made in statements reflecting the activity in a revolving charge account cycle.

The language of the Act is clear and unambiguous, and completely contrary to Petitioner's position. For this reason alone, the petition for a writ of certiorari should be denied. In addition, however, the petition fails to meet any of the standards set forth in Supreme Court Rule 19. Petitioner has not articulated any reason why this matter is either special or unique. There are no conflicting decisions of any other court—state or federal. There are no conflicts with state law. The Court of Appeals' decision is not a departure from the accepted and usual course of judicial proceedings. The reported decisions, administrative rulings and the legislative history uniformly supports the legality of Macy's disclosure statements. Therefore, Petitioner has stated no valid reason why his petition for writ of certiorari should be granted.

## II.

## COUNTERSTATEMENT OF QUESTIONS PRESENTED.

Should this Court review the decision of the Court of Appeals, the sole issue presented would be: Has Macy violated the provisions of the Truth in Lending Act by disclosing on its monthly revolving account statements, an annual percentage rate, where said rate is "determined by multiplying the periodic rate by the

number of periods in a year"? See Truth in Lending Act, Sections 127, 127(a)(4) and 127(b)(5), 15 U.S.C. §1637.

## III.

## COUNTERSTATEMENT OF FACTS.

As stated in the *Introductory Statement*, Petitioner may be confusing a nominal rate with a "true" or "effective" yield rate. If any confusion is present, it may be based upon a misunderstanding of the method utilized by Macy to compute finance charges. Macy computes finance charges upon the balance outstanding at the beginning of the billing cycle. This balance is known as the "previous balance." However, the customer is given the option of paying that balance in full within thirty days, in which case no finance is assessed. If the customer makes a partial payment, a finance charge is computed upon the balance outstanding at the beginning of the cycle, which is the previous month's ending balance carried forward as the beginning balance of the current cycle. Purchases made during the current billing cycle are not included in the previous balance upon which the finance charge is computed. Likewise, payments or credits received during the current cycle which only partially offset the previous balance are not deducted from the previous balance upon which the finance charge is computed. The rates imposed are 1½% on the first $1,000 and 1% on so much of the balance as exceeds $1,000.

Macy discloses to its customers, on its monthly statements, that finance charges will be determined "by applying Periodic Rates of 1½% per month to the first $1,000 of the Previous Balance, and 1% on such balance in excess thereof, corresponding to ANNUAL PERCENTAGE RATES of 18% and 12%, respectively." Macy also makes the following disclosure: "FI-

NANCE CHARGE is computed on the Previous Balance, which is the amount owed (New Balance) at the end of the prior billing period, without deducting payments and credits, or adding purchases, shown on this statement."

Petitioner held an "open-end" or "revolving" account with Macy for the months of July, August and September, 1971, and was mailed statements with the above disclosures. He concedes that the previous balance method is lawful, and not in issue. (Petition, p. 15.)

## IV.

## SUMMARY OF ARGUMENT.

1. Both the Truth in Lending Act and Regulation Z require that the annual percentage rate be computed by multiplying the periodic rate by the number of periods in a year. With respect to Macy's rates, this is accomplished by multiplying the periodic rates of 1½% and 1% by the periods in a year (12 billing cycles) with the resultant rates of 18% and 12%, respectively.

2. The statutory and regulatory scheme establishes without doubt that the annual percentage rate is to be a *nominal* rate as opposed to a true effective yield rate.

3. Both the Federal Reserve Board and the Federal Trade Commission have recognized the validity of the method of Macy's disclosures.

4. The legislative history of the Act demonstrates that the annual percentage rate to be disclosed in any statement of an open-end account was to be a *nominal* rate to be determined by multiplying the periodic rate by the number of periods in a year.

## V.

## ARGUMENT.

### A. Both the Truth in Lending Act and Regulation Z Require That the Annual Percentage Rate Be Computed by Multiplying the Periodic Rate by the Number of Periods in a Year. With Respect to Macy's Rates, This Is Accomplished by Multiplying the Periodic Rates of 1½% and 1% by the Periods in a Year (12 Billing Cycles) With the Resultant Rates of 18% and 12%, Respectively.

Both the Truth in Lending Act and Regulation Z make it clear that, with respect to open-end credit, the annual percentage rate must be disclosed as the product of the periodic rate and the number of periods in a year. Macy's disclosed annual percentage rates of 18% and 12% are the respective products of multiplying the periods in a year (12), by the monthly rates of 1½% and 1%. This practice complies with §107(a)(2) of the Truth in Lending Act (15 U.S.C. 1606) which provides that, with respect to open-end credit, the annual percentage rate shall be determined:

> "as the quotient (expressed as a percentage) of the total finance charge for the period to which it relates *divided by the amount upon which the finance charge for that period is based,* multiplied by the number of such periods in a year." (Emphasis added.)

Accordingly, if a finance charge of $1.50 is assessed on a previous balance of $100, the annual percentage rate is computed by multiplying the quotient (expressed as a percentage) of the total finance charge ($1.50) for the period to which it relates, divided by the amount upon which the finance charge for that pe-

riod is based ($100) times the number of such periods in a year (12). The computation is as follows:

$1.50/$100 = 1½%
1½% x 12 = 18%

This section provides that the denominator shall be "the amount upon which the finance charge for that period is based."

The above statutory language and the interpretation thereof is reinforced by Section 226.5(a)(1)(i) of Regulation Z. This provides that the annual percentage rate for open-end credit may be disclosed as follows:

> "(1) Where the finance charge is exclusively the product of the application of one or more periodic rates
>
> "(i) by multiplying each periodic rate by the number of periods in a year; or . . ."

The mandate is clear. The annual percentage rate is to be disclosed in nominal terms by simply multiplying the periodic rate by the number of periods in a year. Macy has complied with this mandate.

In addition, other sections of both the Act and Regulation Z support this analysis.

**(a) Truth in Lending Act.**

(1) *Section 127(a)(4) (15 U.S.C. 1637).*

This section provides that before opening an account in an open-end plan, the creditor shall make certain disclosures, including "the corresponding nominal annual percentage rate determined by multiplying the periodic rate by the number of periods in a year."

(2) *Section 127(b)(5) (15 U.S.C. 1637).*

This section provides that the creditor under an open-end plan shall send to the obligor a monthly statement with certain disclosures, including "the corresponding nominal annual percentage rate determined by multiplying the periodic rate by the number of periods in a year."

**(b) Regulation Z.**

(1) *Section 226.7(a)(4).*

This section provides that before opening an account under an open-end plan, the creditor shall make certain disclosures, including "the corresponding annual percentage rate determined by multiplying the periodic rate by the number of periods in a year."

(2) *Section 226.7(b)(6).*

This section provides that the periodic statements sent to the customer must make certain disclosures, including the annual percentage rate as determined under §226.5(a)(1)(i) (quoted at page 6 of this Brief).

These provisions establish without doubt that Macy's disclosures of the annual percentage rates fulfill the requirements of both the Truth in Lending Act and Regulation Z.

**B. The Statutory and Regulatory Scheme Establishes Without Doubt That the Annual Percentage Rate Is to Be a Nominal Rate as Opposed to a True Effective Yield Rate.**

Petitioner is apparently contending that Macy must disclose the annual percentage rate in terms of a true effective yield. However, as recognized by the Trial Court, the nature of an open-end revolving account

dictates that a nominal rate is contemplated under the Act and under Regulation Z. As an effective yield is in part a function of the time of payment, it would be virtually impossible to predict it in advance. The Trial Court stated:

> "The difficulty in attempting to disclose with perfect accuracy the actual yield from the finance charges for a twelve month period lies in the fact that the amount the creditor ultimately realizes as a result of the finance charges is dictated in part by the consumer's own choice of when he makes payments on his outstanding balance. Under Defendant's billing plan there is no yield if the consumer pays the full amount owing within thirty days. There is a yield, of course, in the case of partial payments, with those made early in the billing cycle resulting in a greater yield to the Defendant than those made late in the cycle."*

> "Congress recognized the impossibility of forecasting precisely the ultimate actual yield on open end credit accounts, and accordingly, provided that the required disclosures need reflect only the *nominal* annual rate of the finance charge. This method is expressly mandated by Section 226.5 (a)(1)(i) of Regulation Z and has been approved by the Federal Trade Commission (Consumer Policy Statement Number Four, May 7, 1970, CCH Consumer Guide Report ¶ 30,369) as well as by the Federal Reserve Board (Federal Reserve Board Letter of January 14, 1972, by J. L. Robertson, CCH Consumer Credit Guide ¶ 30,-793)."

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*The fact that customer payment practices would necessarily determine the effective yield was the genesis of the stipulations

As Macy has conformed to the letter and spirit of the Act, the complaint was properly dismissed.

**C. Both the Federal Trade Commission and the Federal Reserve Board Have Recognized the Validity of Method of Disclosures Utilized by Macy.**

Federal Trade Commission Consumer Policy Statement Number Four, dated May 7, 1970, states, in part:

> "A major portion of the Congressional hearings dealing with the Truth in Lending over several years was devoted to open end credit.
>
> "The primary controversy centered around the problems of adapting the Act's point-of-sale disclosure and annual percentage rate calculation requirements to open end credit. After much debate, it was decided that the annual percentage rate of finance charges could be calculated by simply multiplying the periodic rate (usually 1½ percent per month) by the number of periods in a year at what is more a nominal (18%) than an effective rate.
>
> "*It is important to remember that this nominal rate of calculating the annual percentage rate applies irrespective of which of the several methods of calculating finance charges is used by the open end creditor.*" CCH Consumer Guide Plan, ¶ 30,369. (Emphasis added.)

This confirms, without doubt, that the calculation of the annual percentage rate is to be made without reference to what particular method is used by the

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of counsel referred to by Petitioner. As the issue was whether proper disclosures were made pursuant to the Act, the effective yield on Petitioner's open-end account was immaterial.

creditor, and is to be "simply" made by multiplying the periodic rate times the number of periods.

Petitioner has attached as Appendix H to his petition a letter from an accountant-analyst of the Federal Reserve System Board of Governors. Rather than supporting Petitioner's position, it demonstrates his confusion between an annual percentage rate and an effective yield. The letter states the obvious: Both the Act and Regulation Z provide for the disclosure of a nominal annual percentage rate.

**D. The Legislative History of the Act Demonstrates That the Annual Percentage Rate to Be Disclosed in Any Statement of an Open-End Account Was to Be a Nominal Rate to Be Determined by Multiplying the Periodic Rate by the Number of Periods in a Year.**

The Truth in Lending Act was the subject of numerous hearings in the Senate and House of Representatives. As applied to open-end credit, the focus of the final bill was to make known to the customer the various credit options available. This was the reason for requiring disclosure of an annual rate on the monthly statement. It was recognized that the rate to be disclosed would necessarily be nominal. According to the Conference Report:

> "In any statement of an account under an open end plan under which a rate may be used to compute the finance charge (even though, for the particular month, the rate may yield a charge below the minimum and thus be inapplicable) the creditor must state the periodic rate and the 'nominal' annual percentage rate determined by multiplying the periodic rate by the number of

periods in a year." H.Rep. No. 1397, 90th Cong., 2d Sess. 27 (1968); U.S. Code Cong. & Admin. News 1968, p. 2024.

See generally *Ratner v. Chemical Bank of New York Trust Company*, 329 F. Supp. 270, 276-7 (S.D.N.Y. 1971).

## VI.

## CONCLUSION.

Petitioner has failed to fulfill the requirements of Supreme Court Rule 19 pertaining to the requirements for the granting of a Petition for a Writ of Certiorari. Petitioner has shown no authority conflicting with the Appellate Court's determination below, and Petitioner has stated no valid reason why the decision of the Appellate Court in any way departed from the accepted and usual course of judicial reason.

For this reason and for the reasons stated above, it is respectfully submitted that the Petition for a Writ of Certiorari should be denied.

Dated: October 16, 1973.

Respectfully submitted,

DON T. HIBNER, JR. of
SHEPPARD, MULLIN, RICHTER &
HAMPTON,
*Attorneys for Respondent.*

SHEPPARD, MULLIN, RICHTER & HAMPTON,
DON T. HIBNER, JR.,
TERENCE M. MURPHY,

MCENERNEY & JACOBS,
GARRETT MCENERNEY, II,
*Of Counsel.*